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Memorandum Report

**Assistance to Delaware Superior
Court Regarding Individual
Civil Case Assignment**



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Technical Assistance Report No. 3-076

Justice Programs Office

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K. Kent Batty

Judge James Meagher

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CTAP Staff

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Services to State and Local Courts Under a Grant From the State Justice Institute

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4400 Massachusetts Avenue, N.W., Washington, D.C. 20016-8159



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**Courts Technical Assistance Project
Assignment Data Sheet**

Technical Assistance No.: 3-076

Requesting Jurisdiction: Delaware Superior Court

Requesting Agency: Administrative Office of the Delaware Superior Court

Requesting Official: Thomas J. Ralston, Court Administrator

Local Coordinator: Thomas J. Ralston

Date of On-Site Study: January 13, 1995

Consultants Assigned: K. Kent Batty
Judge James Meagher
Judge James J. Rashid

CTAP Staff Coordinator: Caroline S. Cooper

Central Focus of Study: Assistance to the Delaware Superior Court
Regarding Individual Civil Case Assignment

This report was prepared in conjunction with the Courts Technical Assistance Project, which is conducted under a grant from the State Justice Institute to The American University. The points of view expressed do not necessarily represent the official position or policies of the State Justice Institute.



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MEMORANDUM REPORT

Justice Programs Office

TEL: (202) 885-2875

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Re: C.T.A.P. Assignment No. 3-076: Assistance to Delaware Superior Court in Exploring the Benefits of an Individual Assignment System for Civil Cases

Date: February 3, 1995

BACKGROUND

Among the recommendations of a recently completed futures study conducted by members of the Delaware Bar Association at the request of the Chief Justice, the Governor and the State Legislature, was that the Delaware Superior Court investigate the utility of an individual assignment system for civil cases in New Castle County (Wilmington). In response to this recommendation, Thomas J. Ralston, Court Administrator for the Superior Court of Delaware, requested the State Justice Institute Courts Technical Assistance Project (CTAP) at The American University to provide guidance to the Court in exploring the benefits of an individual calendaring system and the implementation issues that might be involved in the transition from the current master calendaring system. Among issues of special concern were the potential impact of individual assignment upon the traditional collegiality of the Court and upon courtroom and support staff needs for each judge. Although the Court's current focus of attention was upon the civil case assignment system, interest was expressed in exploring these issues as they might also relate to criminal docketing procedures.

In response to Mr. Ralston's request, the CTAP designated representatives from two jurisdictions which had undergone the transition from a master to an individual calendaring system for civil cases to meet with Delaware Court officials: Judge James J. Rashid, Chief Judge of the Third Judicial Circuit Court of Michigan (Wayne County, Detroit), and K. Kent Batty, Executive Court Administrator of that Court; and Judge James Meagher, recently retired Administrative Chief Judge of the Montgomery County (Dayton, Ohio) Court of Common Pleas. On January 13, 1995, the Delaware Superior Court cleared the calendar of all civil proceedings and most criminal proceedings to permit a one-day conference of judges and staff with the CTAP consultants. The format of the session was a panel discussion, moderated by Mr. Batty, who has prepared this team summary of the session. The meeting commenced with a review of basic principles of caseflow management and specific elements of both the Wayne County and Montgomery County individual calendaring systems. This review produced a wide-ranging discussion which appeared to touch on the issues that the Delaware Superior Court was addressing.

What follows is K. Kent Batty's summary of the technical assistance team's comments and suggestions offered throughout the day.

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**Observations and Recommendations of the
Technical Assistance Team**

REVIEW OF KEY PRINCIPLES

Research examining courts with speedy disposition rates or successful delay reduction efforts has revealed a number of elements that seem to be essential to success:

1. The leadership of judges, especially the presiding judge, is virtually mandatory; there must also be a clear commitment to the effort from the bench as a whole.
2. Administrative staff must be involved in the development, implementation and execution of any delay reduction effort or caseload management system.
3. Success requires a focus on goals -- case processing time frames to be strived for.
4. Education and training for staff and bench (and, to a lesser extent, the bar), as to the principles of effective case management and as to the system to be followed, is a *sine qua non* to achieving success.
5. Information about the nature of the caseload and each specific case must be readily available to both judges and staff.
6. There must be frequent and effective communication, within the court and with the bar, over the operation of the system, throughout implementation and execution.
7. There are certain caseload management principles that provide the best guarantee of success--
 - > the court must take early and continuous control of its cases;
 - > short scheduling of events is essential;
 - > lawyers must be reasonably accommodated;

- > there must be an expectation that events will happen when they are scheduled.
- 8. There must be mechanisms in place which clearly establish and support the accountability of judges for their caseloads.
- 9. Special efforts to reduce the backlog of old cases have proven necessary in many situations.

SPECIFIC AREAS OF CONCERN

CONVERT TO INDIVIDUAL CASE ASSIGNMENT?

Although there are courts with successful master calendar or hybrid systems, the greater chance of success, in the team's opinion, lies with the individual calendar system. The data from Wayne County's experience were offered as a clear example of the dramatic improvements that can be achieved under the individual calendar.

"TRIGGER" FORMAT FOR ASSIGNED CASES

Uniformly and repeatedly, the team emphasized the need to assign all cases to judges immediately upon filing. It could not see any benefit to awaiting a triggering motion in certain types of cases. Not only would such a system conflict with the principle of early court control, but it also may be subject to manipulation by attorneys who may file a triggering motion solely for the purpose of affecting the case assignment.

PILOT PROJECT?

There are more elements in favor of a pilot project approach, although it may be easier to fully convert a small court than a large one. Among the benefits to be gained from a pilot project are:

- a. Reorganizing case management procedures and processes for two judges (as was suggested) and a portion of the cases will be less difficult to cope with administratively.
- b. The local legal culture will be easier to reshape with a gradual approach, particularly if it is one into which the bar has input during the formulation and refinement processes.
- c. It will permit fine-tuning the system much more readily than a full conversion would.

- d. Similarly, a successful pilot will serve to demonstrate to skeptics among the bench and bar that the new system can function effectively without causing upheaval or harm to the participants or their cases.

ASSIGNMENT OF CASES

Current pending cases should be assigned proportionately to those judges going on the individual calendar. This apportionment should include a fair share (and no more than a fair share) of each case type in the system. New cases should be assigned to individual calendar judges immediately upon filing.

There was discussion of whether to divvy up pending and new cases among judges who remain under the master calendar. Experience in Wayne County showed that, with cases distributed even to master calendar judges, those judges undertook greater interest in pretrial matters in cases assigned to them. Consequently, and as conversion to a full-scale individual calendar became inevitable, the total pending caseloads assigned to them began to drop, because, among other things, they were taking a harder look at dispositive motions. The bar, moreover, began to understand that a particular case would remain assigned to a particular judge until disposition - that may have influenced attorney behavior.

STAFF REDEPLOYMENT

The conversion from master to individual calendar should not require redeployment of personnel. The court's decision in this matter will depend on the number of staff currently assigned to judges, how those employees are used and what the court's (and employees') willingness is to alter or broaden the work of those employees. Wayne County, with a significant central staff, still did not redeploy staff to courtrooms. All persons assigned to courtrooms (deputy county clerk, sheriff's deputy, court reporter and secretary/law clerk) were trained in the principles and procedures of the individual calendar. It was then left to each individual judge to establish an effective work team by assigning tasks to staff as the judge deemed appropriate. (Number of staff assigned to a courtroom has not been shown to have a significant impact on case processing times--other courts with fewer personnel assigned to each courtroom have been very successful under the individual calendar.)

AUTOMATED CASE MANAGEMENT

Although effective caseload management and delay reduction can be accomplished without automation, a properly-adapted, automated system will make any new system easier to implement. Notices, scheduling procedures and management reports are among those things that may have to be changed to implement the new system. Clearly, such changes are easier to do in an automated environment. As to redesigning reports, the court should concentrate first on producing straightforward, easily understood reports that provide the

necessary information about caseload, in detail and in summary form. The development of more elaborate reports, such as one to display aggregate cases numbers by age since filing, can be delayed until the system has matured a bit.

NINE COURTROOMS, THIRTEEN JUDGES

It is not essential to have a courtroom for each judge. In both Montgomery and Wayne counties, status or scheduling conferences, pretrials and settlement conferences are conducted in chambers. If a record, arising out of one of the conferences, is necessary, a court reporter can be brought into chambers or an available courtroom can be located with a phone call or two. Experience suggests that it is a rare courthouse that has 70% (9/13) of its courtrooms in use at any one time. It will require coordination and communication, to be sure, among judges and staff. Clear guidelines (providing for staggered motion days, for example) for courtroom use and priority will help any system for sharing work well.

OTHER ISSUES/GENERAL COMMENTS

TRIAL SETTING

Defining the point in the caseload process at which trial dates should be set is a matter of determining which alternative works best in the culture of your court. Dayton has a long record of speedy dispositions despite the fact that its practice of setting trial dates at an early scheduling conference is not one recommended by experts. Detroit has followed those recommendations and is setting trials at the next-to-last case processing event (the settlement conference) for six weeks to three months into the future. As a result, adjournments of trial are very rare.

Experience shows that judges converting to the individual calendar worry most about trial scheduling - providing certainty and avoiding downtime. Managing a trial docket is a highly individualized skill. How a judge should set cases depends on typical rates of settlement in various types of cases, trial management skills and success at forecasting trial lengths, to name only a few elements. The only way to learn this skill is to do it. Judges will "get the hang of it" faster than they think, because the trial-and-error method is a great teacher. Effective trial scheduling is an art, not a science.

On those occasions when a judge faces the prospect of two trials which must go on the same date, informal "backup" procedures have worked best in both Dayton and Detroit. In each court, judges often make themselves available to each other for such emergencies. The communication is two-way: a judge with downtime often will let other judges know of his availability for a short trial; and a judge faced with two trials often will contact her peers, the presiding judge or central staff, serving as a clearinghouse, to seek help.

TRIAL DATE CERTAINTY

The goal of effective trial-setting is, of course, to maximize certainty of trial, while minimizing judicial downtime. Perhaps the best means of insuring trial date certainty is to establish that trials will occur as scheduled in your court. As flip as that sounds, it is true: a court must establish and continually meet the expectation that a trial date is a trial date, except under the rarest of circumstances. The team believes that establishing trial dates as certain begins with educating the bar to the court's intention, assuring attorneys that the bench will be reasonable in setting trial dates, but then sticking to those dates, like Deion Sanders to a wide receiver (really tightly, for the non-sportsminded). It may mean under-scheduling trials, risking downtime, as judges learn the art of trial scheduling, but certainty of trial is essential.

UNIFORMITY VERSUS INDIVIDUALITY

When the court operates under an individual calendar it will turn over responsibility and accountability for disposition of specific cases to specific judges. Each judge must develop and learn to maximize her and her staff's talents for managing the caseload. To assuage the inevitable concerns of the bar, however, that it will have to cope with distinct systems from judge to judge and with arbitrariness on the part of judges, the court must establish certain timeliness events and rules which all individual calendar judges must follow. Within the court's guidelines, judges can exercise individuality by such things as determining what day(s) of the week and time(s) to conduct particular matters; managing their own trial calendars; and determining the duration and content of conferences. A balance can be struck between these competing needs, but it requires negotiation to reach consensus among the bench.

LIFE UNDER THE INDIVIDUAL CALENDAR

In the initial months after conversion, judges should expect to work harder than they have worked in some time. But once they have settled in, they will find a greater sense of accomplishment from their work. The ability to set their own calendars will give them a feeling of freedom about their work and may release bench time for other, in-chambers matters.

CONCLUSION

To paraphrase one of Judge Meagher's remarks: at its foundation, *case management is not about processing speed, but about optimizing the availability of judges, the system's most important resource.* The Delaware Superior Court has gathered information about delay reduction programs and calendaring systems and has benefited from much study and analysis. It should be ready to make a decision. We recommend conversion to the individual calendar via a pilot project. Once that decision is made, the court must create

a team to formulate how the individual calendar will work best in its local legal culture and to develop an implementation strategy. That team must be led by judges, reflecting their commitment, but it must include staff, for its expertise and commitment, and the bar, to insure its cooperation.

Making the transition to the individual calendar is not unlike the re-engineering concepts (including TQM) that are being touted in private industry and are making their way into government. The court must examine how it wants to restructure its operations to meet the challenges of the future. As TQM suggests, in order to optimize the results of this effort, representatives of the major participants in the system must be included in its design. But it is the court that must make the final decisions - participation does not connote democracy or veto power. When the bench leads in a well-thought-out direction, success will follow.